

STATE OF MINNESOTA
OFFICE ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Eugene John Sullivan	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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The above-entitled matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on November 22, 2005, at 9:30 a.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. The record closed at the conclusion of the hearing.

Michael J. Tostengard, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared for the Department of Labor and Industry (the Department).

There was no appearance by or on behalf of the Respondent, Eugene John Sullivan, 2408 Girard Avenue South, Minneapolis, MN 55405.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, Director of Legal Services, Minnesota Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

The issues presented in this case are whether the Respondent is subject to discipline and/or civil penalties because:

(1) By engaging in unlicensed residential building contractor activity, the Respondent violated Minn. Stat. §§ 326.84, subds. 1 and 1b, and 326.842;

(2) By failing to obtain required work permits, the Respondent engaged in a fraudulent, deceptive or dishonest practice in violation of Minn. Stat. § 326.91, subd. 1(2);

(3) By violating the Commissioner's Cease and Desist Order dated March 1995 and a permanent injunction issued by the Ramsey County District Court on September 4, 1996, which precluded the Respondent from engaging in unlicensed building contractor activity, the Respondent is subject to discipline pursuant to Minn. Stat. § 326.91, subd. 1(3); and

(4) By failing to complete work he contracted to perform in August 2004 in Champlin, Minnesota, the Respondent performed in breach of contract so as to cause injury or harm to the public, in violation of Minn. Stat. § 326.91, subd. 1(4).

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On March 18, 2005, the Commissioner of Commerce issued a Notice of and Order for Hearing, Order for Prehearing conference, Order to Show Cause, and Statement of Charges (Notice and Order for Hearing). On March 29, 2005, the Department of Commerce served the Notice and Order for Hearing on the Respondent by first-class mail addressed to Eugene John Sullivan at 7924 59th Avenue, New Hope, MN 55428.

2. The Notice and Order for Hearing contained the following language:

Respondent's failure to appear at the contested case hearing and/or prehearing conference may result in a finding that the Respondent is in default, that the [Department] of Commerce's allegations contained in the Statement of Charges [and] Notice and Order may be accepted as true, and its proposed action may be upheld.

3. The Prehearing Conference took place as scheduled on May 4, 2005, at the Office of Administrative Hearings. The Respondent appeared at the prehearing conference and indicated his address had changed to 2408 Girard Avenue South, Minneapolis, MN 55405. Based on discussions at the prehearing conference, the hearing was scheduled to take place August 3, 2005, at the Office of Administrative Hearings.¹

¹ First Prehearing Order, May 4, 2005.

4. On August 3, 2005, the Respondent appeared for the hearing but requested a continuance because of a pending criminal trial on charges related to this proceeding. The Department agreed to the continuance, and it was granted for good cause. Another prehearing conference was scheduled to take place by telephone on October 10, 2005.²

5. On October 10, 2005, the telephone prehearing conference took place as scheduled. The Respondent participated in the conference, during which the Respondent indicated that the criminal matter would be resolved within one week. The hearing was rescheduled for November 22, 2005.³

6. On November 22, 2005, the Respondent failed to appear for the hearing. He did not contact the Department or the Administrative Law Judge to request a continuance. Because the Respondent failed to appear for the hearing in this matter, he is in default.

7. Pursuant to Minn. R. 1400.6000, the allegations contained in the Statement of Charges at paragraphs 1-12 are hereby taken as true and incorporated into these Findings of Fact.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027, 326.91, subd. 4, and 326.92, subd. 3.

2. The Notice and Order for Hearing issued by the Department was proper, and the Department has fulfilled all relevant procedural requirements of law and rule.

3. The Respondent is in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Statement of Charges are hereby taken as true.

4. By engaging in unlicensed residential building contractor activity, the Respondent violated Minn. Stat. §§ 326.84, subds. 1 and 1b, and 326.842.

5. By failing to obtain required work permits, the Respondent engaged in a fraudulent, deceptive or dishonest practice in violation of Minn. Stat. § 326.91, subd. 1(2).

6. By violating the Commissioner's Cease and Desist Order and the permanent injunction issued by the Ramsey County District Court, the Respondent is subject to discipline pursuant to Minn. Stat. § 326.91, subd. 1(3).

² Second Prehearing Order, August 3, 2005.

³ Letter dated October 10, 2005, from the Administrative Law Judge to Michael J. Tostengard and Eugene John Sullivan.

7. By failing to complete work he contracted to perform, the Respondent performed in breach of contract so as to cause injury or harm to the public, in violation of Minn. Stat. § 326.91, subd. 1(4).

8. The imposition of discipline and/or civil penalties against the Respondent is in the public interest.

Based on the above Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Labor and Industry take disciplinary action and assess appropriate civil penalties against the Respondent.

Dated this 29th day of April, 2011

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.